800.

SUPREME COURT OF THE UNITED STATES.

No. ~~75.~~ 50 –

GEORGE KING'S HEIRS, AND RAPHAEL SEMMES ET AL., PLAINTIFFS IN ERROR,

VERSUS

JOSIAS THOMPSON AND WIFE.

WRIT OF ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE COUNTY OF WASHINGTON, D. C.

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DISTRICT OF COLUMBIA, *scl.*

Style of court. At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the 56th.

Were present, the honorable WILLIAM CRANCH, chief judge, BUCKNER THRUSTON, and JAMES S. MORSELL, assistant judges.
HENRY ASHTON, esquire, marshal.
WILLIAM BRENT, clerk.

In the records of proceedings of the same court, among others, are the following, to wit:

Parties. Josiah Thompson, and Betsey his wife, against John Alexander King, George King, Richard McSherry, and Anna C. his wife, and Charles King, by Margaret King his committee, heirs at law of George King deceased, and Raphael Semmes, and others. Be it remembered that heretofore, to wit, on the fourteenth day of June, in the year eighteen hundred and twenty-six, the said complainants, by William M. Worthington, esq., their solicitor, filed in court here the following bill of complaint and exhibits, in the words, and of the tenor following, to wit:

Bill of compl't. To the honorable the judges of the circuit court for the county of Washington, in the District of Columbia, sitting as a court of chancery, humbly complaining, showeth to your honors your orator and oratrix, Josiah Thompson and Betsy his wife, that, in the month of October, in the year eighteen hundred and twelve, your orator married Betsy King, daughter of George King of Georgetown, in the District of Columbia; that at the time of his said marriage the said George King was a merchant, conducting a large mercantile establishment, and transacting a profitable business; that at this time he was in high credit, was supposed to possess, and as your orator believes, really did possess a large active capital, and at the same time was seized of a valuable real estate, consisting of houses and lots in Georgetown aforesaid; that his debts were not large, but were generally esteemed small in comparison with the value of his property; that it was universally thought, and, as your orator believes, the fact was so, that, after payment of all his debts, the surplus property would have constituted a fortune, and have enabled him at that time to have provided handsomely for all his children.

Your orator states that among the property of which the said George King was seized, was a house and lot on Cecil alley which was very much out of repair, and almost uninhabitable from its total destitution of every convenience; that a few days after the marriage of the said Thompson, the said George King proposed to grant to the said Thompson the said property, if the said Thompson would put such repairs on the said house as would render the same a comfortable residence for the said Thompson and his said wife, saying at the same time that he had always intended the said property for his daughter Betsey, but observing that the property was very much out of repair, said that as your orator had more knowledge of building and repairing than he had, your orator could do it at much less expense. Your

orator, from certain considerations, determined to accept the property upon those terms, although he did so with real reluctance, arising, among other things, from the evident expectation entertained by Mr. King that the repairs would be made immediately, and from the very great expenditure which would be required to effect it.

Your orator, under these circumstances, accepted from the said George King the possession of the said property, commenced the repair thereof, and after placing it in a condition to enable him to reside therein, removed with his family to the same, and, in the confidence that his right to the same was secure, continued to repair the said house, and added greatly to the improvement of the place by numerous costly additions, by erecting necessary buildings, enclosing the grounds, and contributing to the improvement of the street or alley on which the house stands, all of which your orator charges cost him upwards of four thousand dollars.

Your orator continued to occupy the said house until the year eighteen hundred and sixteen, when he removed to the western country: prior to the removal of your orator he received from the said George King the letter marked A, which your orator prays may be taken as part of this his bill, acknowledging the right in your orator to the said premises, and recognizing the just expectations of your orator, that, in putting him in possession of the property, and permitting him to invest large sums in the improvement of it, a conveyance in absolute fee would be executed to him by the said George King, yet proposing a different arrangement as will be seen by reference thereto. A correspondence hereupon arose between your orator and the said King, in the course of which the letter of which a copy is herewith exhibited, marked D, was, in a spirit of conciliation, addressed to the said King, in reply to which your orator, Josiah Thompson, received the letter marked E, in the hand-writing of the said George King: no further communication was exchanged on the subject, your orator's feeling satisfied with the proposition contained in the last mentioned letter. On your orator's removal, he rented the said property, and constituted the said King his agent to collect his rents, the duties of which situation, the said King performed without advancing at any time any claim to the said property, but always acknowledging the same to be the property of your orator, as will be seen by reference to the annexed letters marked B, C, in the hand-writing of the said King. Your orator further states, that, on the day of , the said George King died intestate, leaving besides the aforesaid Betsey, your orator's wife, the following children, who your orator prays may be made defendants to this his bill, together with Richard McSherry hereinafter mentioned, viz., Alexander King, George King, Anna C. McSherry, wife of Richard McSherry, and Charles King. Your orator further states, that, at the time of the death of the said King, the legal title to the aforesaid property was in him, and that he died without executing a conveyance for the same to your orator, although it was the express understanding and agreement of your orator and the said George King, that a deed for the same should be executed to your orator; and that the said title is now in the said defendants, the heirs of said King.

In tender consideration whereof, and for as much as your orator is remediless in the premises, except in this honorable court, where matters of this kind are properly cognizable: To the end therefore, that *that* the said several persons above named may be made defendants to this bill; that Charles King, who is a lunatic, may answer by his guardian or committee, and that

the other defendants may, upon their corporal oaths, full, true, and perfect answers make to all the matters herein charged, &c , and that the said defendants may be decreed to convey, by good and sufficient deed, to your orators in fee simple, the legal title to the aforesaid property in fulfilment of the said agreement of the said George King with your orator; and in the event that the same cannot for any reason be done, that the said property may stand charged to the amount of the repairs and improvements put upon the same by your orator, and that your orator may have such further relief as is agreeable to equity, may it please your honors to grant to your orator the United States' writ of subpœna to be directed to the said defendants, commanding and enjoining them, &c. And inasmuch as the said McSherry and Anna C. McSherry are not inhabitants of this District, and do not reside therein; that your orator may have an order of publication in due form, citing them to appear, &c., according to the act of Assembly in such case provided, and rules and practice of this court.

WM. M. WORTHINGTON.

Complainant's Exhibit A.

GEO. TOWN, 17*th Apl.* 1816.

Mr. Josias Thompson:

SIR: I am inform'd that you are in suspense in regard to the property you now live on, and I think it a duty incumbent on let you know the terms I mean to let my daughter Betsey have it. I hold myself ready, and hold myself bound to give a deed to a trustee, who shall hold it in trust for her and yourself during your lives, and then, after the death of you both, to revert to her lawful heirs, her children, if any she has, if not, to my heirs: but you may say I wrong you in this way, by not letting you know before now that I did not mean to deed to you instead of keeping it for her, and on that acc't you have put more improvements than you would have done had you have been informed before. You may now sell the property, and all you can get over three thousand dollars for it, you can do as you like with; but that sum must be kept sacred for the use of your wife in the hands of trustees, for her support in case she might ever need it, the use of which as the income will be at your disposal during your own and her life, and then to her heirs as before; and other terms than this it will be useless for you to look for, without you find two just fathers that shall say I ought to do otherways, and, after hearing their reasons on the subject, perhaps I might alter my opinion.

Y'rs, with due esteem,

GEO. KING.

Complainant's Exhibit B.

GEO. TOWN, 23*d March*, 1831.

Mr. Josias Thompson:

DR. SIR: I am sorry to inform you that Mr. Jacob Pain has laid an attachment on yr. property in Geo. Town: I am in hopes you'l be able to at-

tend to it. Our court sets the 2d Monday in next month, at which time I suppose he will get a judgment, but I am certain he cannot do much with it, as yr. wharff property is not at present worth the rent you pay, for rent now is down to almost nothing. Your house on Cecil alley only brings $150: the house on the wharff brings little or nothing, the tenants are continually comeing in and going out, and little or nothing can be got from them. Baker has given up since the 1st Jan'y last. I certainly should have pd. Mr. Paine had I have had it in my power. Property has fel here very low, and rents worse.

I have the pleasure of informing you we are all well, and hopes this will find you and family the same.

Yo's affectionately,

GEO. KING.

Complainant's Exhibit C.

GEO. TOWN, 14 *Augt.* 1819.

Mr. Josias Thompson:

DR. SIR: Mr. Key has got a full judgment against you for that fellow. Mr. Grohm was here a few days ago, and was talking to him about it, and I am afraid he cannot do any thing towards it; at least he observed he had more just debts to pay that he must pay first. Mr. Key has press'd me to inform you that he did not wish to put you to any further expense, and hoped you would have it settled. The suit for the fees was about $35 and costs. Mr. Kennedy has left your house since the 1st July last, and I have not been able to get a tennant since. Houses are very dul here now; rents have fallen very much; I have several emty houses myself. I have been obliged to put Seemes' tavern at $1,000.

Rev'd Mr. McElroy's bro has just arriv'd from Ireland; he has bro't a letter from Mr. Donan, but nothing from he inflexable parents, who are the wealthiest people in county which they reside. Mr. McElroy left her father at the point of death, and was not permitted to see him, altho' they knew he was comeing to where their daughter resided—harden'd parents! I hope the old man has not forgotten her in his will, for I have no hesitation in say she is a poor distress'd, the worthy daughter, and I realy do hope the woman has better times in store for her. She has two of the most amiable little daughters you ever saw to their age; one is at the monistary, but I fear she cannot be kept there much longer. The youngest well taken care of at a friend's house in the city. I am sorry to inform you that the times here never so bad; money cannot be had for any thing, without it bearly something to eat. I can scarcely imagine how the poor mechanics does to make out at all; scarcely a building thought of; banks getting every cent that can be rais'd for them, without giving any out, which makes hard times you may be sure.

Yr. with due esteem,

GEO. KING.

N. B. As your family may want to see any letter you have from me, I will write you another which shall not be gloomy.

G. K.

Complainant's Exhibit D.

GEO. TOWN, 26 *April*, 1816.

Mr. George King:

DEAR SIR: Your letter of the 21st inst. has been duly received. Its contents have given me a twofold uneasiness: first, because it indicates displeasure on your part from an expression in my letter to you of the 20th; and, secondly, because it reiterates a sentiment contained in your letter of the 17th, but too much calculated to wound the feelings of a husband possest in the smallest degree of those sentiments which must constitute his worth. As to the first, I most readily assure you that it was very foreign to my wish indeed to use any expression that could, in the smallest degree, excite your displeasure; a sense of duty to myself, and respect for the father of her whom I have taken to be my wife, precludes such an intention. I hope therefore you will consider it as merely explanatory of my ideas, without the least allusion to either of her brothers or sisters. As to the second, I will yet flatter myself with the hope that you will relax from the course which you state to be your ultimatum, for, as I cannot from a retrospect of my past life, either as a husband or a man, discover any conduct on my part such as to justify so severe a censure, for surely a husband is the proper guardian or trustee to his wife, and to constitute any other, must imply a want of confidence in his integrity or good conduct: it can and will bear no other construction. I hope, therefore, you will reconsider it, and withdraw a proposition that must eventually be productive of much anxiety and of but little benefit, and as an earnest of my intentions, and to testify to you the sincerity of my professions, for I declare to you that no selfish motive shall ever have any influence on my mind in this business, I now submit for your consideration the three following proposals:

1st. Let the property be valued as to its worth at the time it was put into my possession, and I will pay the amount over to you, which you may then hold for my wife, or give it to whom you please; for, when I married her, I was not influenced by any pecuniary motive, and as she has never given me reason to regret my choice, I surely will not allow a consideration like the present to create the smallest uneasiness.

2d. Let the improvements be estimated: pay me the amount, and then I will relinquish all claim, and you will be at liberty to dispose of it as you may deem proper.

3d. Execute a deed to your daughter at once in fee-simple, and I will for her benefit and advantage cheerfully give in all that I have expended: this will at once be making her the guardian of her own property, and, if it should please God to call me first, will be to her a support.

Thus, my dear sir, you will find that I am not disposed to dispute about the original value of the property, for, tho' I consider it as certainly the property of my wife from the delivery of it into my possession, as any subsequent act could make it, and from the manner I was allowed and encouraged to go on with the improvements, yet I am willing at any moment to bind myself to abide by either of the above proposals.

Yrs. resp'y.

Complainant's Exhibit E.

GEO. TOWN, *29th Apl.* 1816.

SIR: Yours of the 28th is now before ; I make no hesitation of compliing with your 1st proposial, for it is just what I propos'd in my first to you, and I will do it an other way, giving you your choice, viz. I will deed the dwelling-house and all above it to you, and about 20 ft. below it; and then all below that I will deed to Betsey, provided she will never deed it nor otherwys dispose of it during her life only by will, which she shall always be at liberty to make when and how she pleases.

Yrs.

GEO. KING.

Thereupon, subpœnas were issued as prayed, and made returnable on the first Monday of August then next.

At which said first Monday of August, in the year 1826, came into court here the said complainants, by their solicitor aforesaid; and the marshal to whom the said subpœnas were directed, makes return thereof that he had summoned the said John A. and George King, Richard McSherry, and Ann his wife, and Charles King, by Margaret King his committee, Raphael Semmes, Charles King and John W Baker, and they being so forwarded, appear in court here by George King, esq. of George, their solicitor.

And thereupon, the said cause was regularly continued at rules until the first Monday of December, 1826, when a certain Raphael Semmes, by Clement Cox, his solicitor, filed in court here the following petition, to wit:

To the honorable Judges of the Circuit Court of the District of Columbia, sitting in Washington county as a court of equity:

Petition of Raphael Semmes to be made a party.

The petition of Raphael Semmes respectfully showeth to your honors, that, by a decree made on the equity side of your honorable court, in the case of Charles King against Josias Thompson, and Betsy his wife, and others, heirs and representatives of George King, late of Washington county, deceased, and on the assent of the said defendants expressed in their answers, the real estate of the said George King, in the said county, was directed to be sold for the benefit of his creditors; and by a subsequent decree your petitioner was constituted the trustee for this and other purposes therein appearing; that, in pursuance of the said decrees, he has sold, among other real estate, a part of lot No. 76, lying in Georgetown, in the county aforesaid, to one John W. Baker, for the sum of sixteen hundred and sixty dollars, the said part of lot appearing on the records of said county, as also in the assessment books of the levy court of the said county, and of the Corporation of Georgetown, as the estate of the said George King; that, after such sale, he was for the first time apprised that the said Josias Thompson and his wife claimed the said real estate under an alleged parole promise of the said George, in consideration whereof, the said Josias had made expensive improvements and repairs on the said part of a lot; that the said Josias and his wife, in pursuance of this claim, subsequently to such sale, and knowing thereof, filed a bill of complaint on the equity side of your honorable court for the said county, against the heirs of the said George King, for a specific performance of the said parol promise, by a conveyance of the said real

estate to them; that, tho' knowing of the said sale, the said Josias and his wife have not made the said John W. Baker or your petitioner a party to the said bill, but that the said John W. Baker knowing thereof, refuses to comply with his purchase; that your petitioner believes from information he has received, that the said George King never did agree, and bind himself to give the said part of lot absolutely to the said Josias and his wife, but only allowed them the use thereof, and expressed a design at some future period to give it to them; that the said George King was, at the period of the said alleged promise, largely indebted, and continued so up to the period of his death; that without any diminution of the estate from the period of his alleged promise aforesaid, the said estate is not now adequate to pay the debts of the said George King; that, among the debts of the debts of the said George King, there appears one as the special bail of the said Josias at the suit of Jacob Payne in your honorable court, for the sum of four hundred and fifty-six dollars, with interest thereon from February 23, 1820, and aggregate costs amounting to thirty-six dollars and thirteen cents, to which amount the estate of George King is entitled to indemnity from the said Josias Thompson; that, by reason of the said bill of complaint of Josias Thompson and his wife, much delay must intervene in the payment of the several creditors of the said George King, and they must thereby be aggrieved in the diminution of their dividends by reason of the loss of interest on the purchase money of the said part of lot 76, whilst the title to the same is in controversy. In tender consideration whereof, and for the quieting of all claims, your petitioner prays to be allowed to come in and make answer to the said bill of complaint of Josias Thompson and wife, and to defend the rights of the creditors of George King so far as concerned therein. And your petitioner will ever pray, &c.

RAPHAEL SEMMES.

C. Cox, *Sol.*

Circuit Court of District of Columbia for Washington County.

On this fifth day of December, A. D. 1826, personally appears in open court, Raphael Semmes, and makes oath to the truth of the charges in the above petition set forth, to the best of his knowledge and belief.

Test. WM. BRENT, *Clk.*

And the said cause was afterwards regularly continued at rules until the first Monday of May, in the year 1827, when the following answers were filed, to wit:

JOSIAH THOMPSON,
vs.
RICHARD MCSHERRY, and ANN C. MCSHERRY his wife, JOHN A. KING, and GEORGE KING of George.

Answer of Richard McSherry and wife, John A. King, and Geo. King.

These defendants, for answer to complainants' bill, say, that being unapprised of the facts contained in said bill, they neither admit nor deny them, but respectfully submit them to the jurisdiction of the honorable court, as in duty they feel themselves bound, &c.

GEORGE KING of George, *Solicitor.*

JOSIAH THOMPSON,
against
MARGARET KING, Committee of
CHARLES KING.

Answer of Charles King. This defendant, for answer to complainants' bill, saith that, having no knowledge of the facts or matters contained in said bill, she is neither disposed to contest nor admit their truth, but respectfully submits them to the honorable court having jurisdiction thereof, to pronounce thereon such a decree, order, or decision, as may to them seem proper, meet, and equitable.

MARGARET KING, *Committee, &c.*

The said cause was then regularly continued at rules until the first Monday of January, 1829, when the following agreement was filed:

MARTINSBURG, *Dec.* 26, 1828.

Agree't to introduce other papers in the trial of this cause. DEAR SIR: Owing to an absence of 10 or 12 days from the town, I did not receive yrs. until late yesterday. I wish the case referred to brought to a speedy and, if possible, successful close. I will therefore readily assent to your proposal, and to the form and manner you think suitable, as counsel in the case of Josias Thompson and wife vs. the heirs of George King. I agree that the case may be heard with the case of Charles King vs. Josias Thompson and wife, and that the evidence taken in the latter case may be read in this so far as it applies, and the depositions of any of the defendants be taken as part of their answers to the bill in this case.

Your obt. servt.

GEORGE KING of George.

The said cause was then regularly continued at rules until the first Monday of April, 1832, when the following agreement was filed, to wit:

Circuit Court of D. C. for the County of Washington:

JOSIAS THOMPSON and Wife,
vs.
JOHN A. KING et al., Heirs-at-Law of
GEORGE KING, dec'd. } *In Chancery.*

Order of court making R. Semmes and J. W. Baker parties. In this cause it is agreed that the bill stand amended by making Raphael Semmes, trustee for the sale of the real estate of George King, dec'd, Charles King, and John W. Baker, defendants, and charging sales by him of the real estate, the subject of the complainants' claim, under the proceedings in the cause of Charles King vs. Josias Thompson et al., in this court, in the manner shown by the trustees' reports and proceedings in said cause; that the answers of sd. Semmes, King, and Baker, be rec'd without affidavit, admitting every thing respecting sales, shown by said reports and proceedings, and denying farther knowledge, charging whatever is charged in his petition in this cause, and the general replication filed thereto; that all the testimony

heretofore taken shall apply to this deft., and that either party be allowed to take other testimony before a justice of the peace, on two days' notice to the other party.

RICH'D S. COXE, *for Compl't's.*
C. COX, *Sol. for R. Semmes, Trustee.*
W. REDIN, *for Baker.*

APRIL 4, 1832.

And thereupon the said Raphael Semmes, Charles King, and John W. Baker, appear in court here by their solicitors, and file the following answers:

Answer of Raphael Semmes, trustee, a deft., to the bill of complaint of Josias Thompson and wife.

Answer of R. Semmes. This deft., saving and reserving to himself the benefit of all manner of exceptions, &c., neverth less now answering thereto admits, that, as trustee for the sale of the real estate of George King, deceased, for the benefit of his creditors, he has made sale of the lot of ground and premises mentioned in said bill of complaint, in the manner therein charged, and charges whatever is charged in the petition of this deft. in this cause, and denies all farther knowledge of the several charges and allegations therein contained.

C. COX, *Solr. for*
R. SEMMES, *Trustee.*

Answer of Charles King to the bill of complaint of Josias Thompson and wife.

Answer of C. King. This defendant, saving, &c., refers for his answer to the amended bill in the said cause to the answer of Raphael Semmes filed therein, and prays that the answer of said Semmes may be taken as the answer of this defendant to said amended bill.

C. COX, *for*
CHAS. KING.

JOSIAS THOMPSON and Wife,
vs.
JOHN A. KING and others. } *In Chancery.*

Answer of J. W. Baker. The separate answer of John W. Baker, a defendant in the said bill, who answers and says, that he answered the bill of Charles King in relation to the same property filed in the cause, Chas. King agt. Thompson and others, on the 4th February, 1828, to which this defendant refers, and prays that his answer in that cause may be taken as his answer in this, with't this, that, &c.

W. REDIN, *for deft. Baker.*

And thereupon the said cause, having been set for hearing by consent, the court passed the following decree, to wit:

JOSIAS THOMPSON and Wife,
vs.
JOHN ALEXANDER KING and others, defendants.

Decree. The complainants, having amended their bill of complaint in this cause, by making Charles King, Raphael Semmes, and John W.

Baker, defendants, and the said defendants having filed their answers in due form, and the cause now coming on for hearing and final decree on the bills, answers, exhibits, and evidence in the same, and having been argued by counsel in the case, it is now, on this fifth day of April, in the year eighteen hundred and thirty-two, ordered, adjudged and decreed, that the said defendants do execute and deliver in due form of law, a conveyance of all the right, title, and interest, which they, the said defendants, as the heirs of George King deceased, or under any title derived from the said George by devise, grant, or any other form or manner, to the house and lot mentioned and described in said bill of complaint, to the said Josias Thompson in fee simple, and that said conveyance be made, executed, and delivered, to said complainant on or before the first day of May ensuing the date hereof, and in case said conveyance shall not be made in manner and form aforesaid, and within the time limited, that then this decree shall have the force and effect of a conveyance as is herein directed to be made; and it is further ordered and decreed that the sale of said premises heretofore made in the case of King against King, and referred to in the pleadings and evidence in this cause, be, and the same is hereby annulled and set aside, and the purchase money paid by the said John W. Baker, be repaid by said trustee, Raphael Semmes, to said Baker, or that he be allowed to receive the same from the Farmers and Mechanics' Bank in Georgetown, in which the same was deposited by him to abide the decision of this cause, and of said other cause, King against King.

By order of court: Test, W. BRENT, *Clk.*

The following are the papers in the case referred to in the agreement at page 15, &c.

CHARLES KING, complt.
vs.
JOSIAS THOMPSON, and ELIZABETH THOMPSON his wife, defts.
} *Bill of Complaint.*

To the honorable Judges of the Circuit Court of the District of Columbia, sitting in Washington county as a court of equity.

Bill of complt. Humbly complaining showeth unto your honors, your orator, Charles King, that some years back, and during the lifetime of George King, your orator did, for the use and accommodation of the said George King, endorse sundry promissory notes of him, the said George King, which were negotiated at the Farmers and Mechanics' Bank of Georgetown; that these notes remained unpaid at the period of the death of the said George King, which occurred in the year eighteen hundred and twenty; that, subsequently to the death of the said George King, your orator sued out letters of administration on his personal estate, and has duly and faithfully administered on the same; that the said Farmers and Mechanics' Bank subsequently instituted a suit against your orator as administrator on the said notes, and, in due course, obtained a verdict and judgment on the same; that no part of the said judgment has, as yet, been paid, but the whole is yet due, amounting with interest to more than seventeen thousand dollars, for all which your orator is individually responsible as endorser as aforesaid; that all the personal assets of the said George King, which your

orator has been enabled to collect and dispose of, have been absorbed in the payment of judgments obtained against the said George King in his life-time, and other claims having a priority; and your orator is a creditor of the estate of the said George King to the amount of more than seven thousand dollars, for payments made by him as administrator over and above the amount of assets aforesaid; that your orator is further a creditor of the estate of the said George King to the amount of upwards of four hundred dollars; that there are numerous other claims against the said George King's estate, making an aggregate of more than thirty-six thousand dollars, yet unpaid; that, in the year eighteen hundred and twenty-two, your orator, in his individual capacity, filed his bill of complaint in your honorable court against the representatives of the said George King, setting forth the inadequacy of the personal estate for the payment of the debts of the said George King, and praying that the real estate might be sold to cover the deficiency; that the heirs and representatives of the said George King respectively appeared and answered the said bill of complaint, and, admitting the charges in the said bill of complaint, agreed to the sale of the said real estate, and especially Elizabeth Thompson, the daughter of the said George King, and Josias Thompson her husband, did appear to the said bill of complaint, and did file their answer to the same, admitting the several matters therein charged to be true, and consenting to the sale of the said real estate; that thereupon the decree of this honorable court was made in the said cause, ordering the sale of the said real estate, and appointing Raphael Semmes trustee for that purpose; that a portion of the said real estate was and still is involved in litigation in this honorable court, and could not have been disposed of without serious loss and prejudice to the several persons interested in the same under and through the said George King; that all the residue of the said real estate which could have been exposed for sale without loss or detriment as aforesaid, has been sold by the said trustee in pursuance of the terms of the said decree; that the net proceeds of the said sales so far as ratified, deducting all expenses of the sale, and from this balance deducting the one-tenth, being the amount allowed by this honorable court to the widow of the said George King, in commutation of dower, exhibits the sum of less than seventeen thousand dollars, applicable for distribution among the creditors; that beyond the amount of sales ratified, the said trustee sold a lot of ground and premises, situate and being in Georgetown, and on the plot of the said town appearing as part of lot No, 76, to one John W. Baker, at and for the sum of sixteen hundred and sixty dollars; that the decree aforesaid for the sale of the real estate of George King was general, without reference to any schedule of the same; that the said lot of ground and premises appeared on the records of Washington county, aforesaid, as the right and estate of the said George King, and was assessed as such in the acc. books of the levy court of the said county, and of the Corporation of Georgetown; and all taxes thereon were regularly paid by him during his life-time, and, as the *rite* and estate of the said George King, it was sold by him, the said trustee, as aforesaid; that subsequently to the said sale, and knowing thereof the said Josias Thompson and his wife, aforesaid, have preferred a claim to the said lot and premises, and have filed their bill of complaint against the other heirs of the said George King, charging that the same was given to them by the said George King, in his life-time, by a parol gift, and praying that their title to the same may be confirmed, that the said Josias Thomp-

son and his wife, though made parties to the aforesaid bill of complaint of your orator filed for the sale of the real estate of the said George King, and by their answers agreeing to the same, and tho' knowing, as your orator expressly charges they did, of the sale of the said lot and premises sold as aforesaid to John W. Baker, failed to make the said John W. Baker, or the said trustee in behalf of the creditors of the said George King, parties to his said bill, and *and* limited the same to the heirs of the said George King; that, of the amount of claims against the estate of George King as aforesaid, it appears by the report of the auditor filed in this honorable court in the said cause which the decree aforesaid was made, only claims, amounting in the aggregate to ten thousand six hundred dollars, are disputed, a claim in favor of Elder and Taylor since the filing of the said report, allowed by this honorable court, being deducted, leaving a balance of undisputed claims amounting to nearly twenty-six thousand dollars, whilst the amount of assets from the sale of the said real estate, excepting the sale aforesaid to John W. Baker, applicable to creditors, is less than seventeen thousand dollars; that your orator has examined the charges contained in the said bill of complaint of the said Josias Thompson and wife, and, from the best information he can obtain, does not believe that the same can be substantiated; that your orator does not believe that the said George King, in his life-time, ever did give the aforesaid lot of ground and premises to the said Josias Thompson and wife, as charged in their said bill of complaint, or to go further than to indicate a desire to do, at some future period; that any promise of the same must have been wholly gratuitous and without obligation, if ever it were made; that the said George King, at the time when the said gift is alleged by the said Josias Thompson and wife, was largely indebted and unable to make the said gift, and continued largely indebted up to the period of his death; that your orator does not believe that the said Josias Thompson or his said wife has ever expended the sum of four thousand dollars, in repairs of the said lot and premises, or near so much; that the said George King permitted the said Josias and his wife to occupy the said lot and premises, and your orator believes that any repairs made were temporary in their character, and have since entirely decayed; that such repairs, when made, were without any suggestion from the said George King, and that the said Josias Thompson and wife have been abundantly compensated for the same by the use of the said lot and premises, during which time as they continued of value; and your orator believes that he can adduce adequate proof of all these facts. Your orator further showeth that among the claims against the estate of the said George King, now filed in this honorable court, is one at the suit of Jacob Payne against the said George King as special bail of the said Josias Thompson, amounting to nearly seven ($683) hundred dollars; that the said Josias is also indebted to the estate of George King in the sum of three hundred dollars, and interest, for the note of the said George, for that sum loaned to the said Josias, and which the said George had to pay, and always claimed of the said Josias. Your orator further showeth that the estate of George King being insolvent, his heirs will have no interest in defending the said bill of complaint, and may therefore admit the facts in the same, or permit the said bill to be taken for confessed, whereby the said Josias Thompson and his wife may effect the confirmation of their title as against the said heirs of George King, without the proof of the same, and so shift from themselves to the creditors the burden of proof that the said lot and premises were the proper right and estate of the said George King, and

as such are liable to his creditors. Your orator further showeth that the said John W. Baker, being apprised of the said suit by the said Josias Thompson and wife, refuses to pay over to the said trustee the purchase-money of the said lot and premises, whilst the same is in dispute, though, as your orator is advised, he has deposited the same in bank to await the issue of the said suit, and expects thereby to avoid responsibility for interest on the said purchase-money whilst the said suit is undetermined. That this allowance to the said John W. Baker will, if the claim of the said Josias Thompson and wife be ultimately rejected, still operate to the loss of the creditors by the diminution of their dividends, that the said creditors of George King, and your orator as one of them, are therefore materially interested in the speedy decision of the said suit; and the estate of the said George King, being insolvent, are the only parties substantially interested in defending the same. Your orator therefore prays that he may be made a party defendant, and be permitted to defend his interest as a creditor in and to the said suit of the said Josias Thompson and wife; and that they may be put to the full proof of their title to the said lot and premises; and that any claim in and to the same may be held chargeable with, and subject to the payment of the said judgment in favor of Jacob Payne aforesaid, and the amount of the said note loaned to the said Josias; and to this end, and that your honors may grant such other and farther relief as to your honors may seem meet, and for as much as your orator is without relief at and by the rules of the common law, may it please your honors, the premises considered, to make the said Josias Thompson and Elizabeth Thompson his wife, parties defendants to this his bill of complaint, and grant the writ of subpœna in the usual form to them directed, commanding them to appear and answer to this your orator's bill of complaint, and your orator will ever pray, &c.

CLEMENT COX,
Solicitor for Complainant.

CHARLES KING,
vs.
JOSIAS THOMPSON and Wife. } *Bill of Complaint.*

To the honorable Circuit Court of the District of Columbia for Washington county as a court of equity:

Amended bill of complt.

Humbly complaining, showeth unto your honors your orator Charles King, that, some years since, your orator did, for the use and accommodation, and the request of George King, in his life-time, endorse divers promissory notes of the said George King, passed to the Farmers and Mechanics' Bank of Georgetown; that these notes severally remained unpaid at the period of the death of the said George King, which occurred in the year 1820.

That, subsequently to his death, your orator sued out letters of administration of his personal estate from the orphan's court for Washington county aforesaid, and they duly and faithfully administered on the same; that the said Farmers and Mechanics' Bank subsequently instituted suit against your orator as administrator on the said notes, and in due course obtained judgment on the same; that the said judgment, amounting, at this time, to more than seventeen thousand dollars, is still due and unpaid, and your orator, as endorser as aforesaid, is individually responsible for the amount thereof; that all the personal estate which your orator has been enabled to collect

and disposed of under the order of the orphan's court aforesaid, has been absorbed in the payment of judgments obtained against the said George King in his life time, and other claims having a priority; and your orator is a creditor of the estate for overpayments made by him beyond the assets to the amount of more than seven hundred dollars; that your orator is a farther creditor of the estate of the said George King to the amount of more than four hundred dollars, as ascertained by the report of the auditor of this court duly ratified by your honors; that, in the year eighteen hundred and twenty two, your orator, as a creditor of the said George King, filed his bill of complaint in your honorable court against the widow and heirs of the said George King, setting forth the inadequacy of the personal estate for the payment of debts, and praying that the real estate whereof the said George died seized, might be sold in aid thereof; that the widow and several heirs, and especially Elizabeth Thompson, the daughter of the said George King, and Josias Thompson her husband, severally appeared and answered, admitting the truth of the said bill, and agreed to the sale of the said real estate for the purpose aforesaid; and the said widow agreed that her right of dower therein should be sold—she therefore received such rationable allowance of the proceeds of sale as your honors should see fit to award her; that thereupon, and by a general decree of the court, without reference to any schedule thereof, the said real estate has been sold by Raphael Semmes, trustee, for this purpose, excepting for a small part which, being in litigation, could not be sold at any fair appreciation; that the net amount of sales so made, and ratified by the court, after deducting all expenses out the amount of the allowance to the widow at the rate of one-tenth part in commutation of dower, is less than seventeen thousand dollars, applicable for distribution among creditors; that, beyond the sales ratified by the court, the said trustee sold a piece or parcel of ground, being a part of lot numbered (76) seventy-six in Georgetown, in Washington county aforesaid, to one John W. Baker, for the sum of sixteen hundred and sixty dollars; that the said part of lot appeared on the land records of Washington county aforesaid, and on the assessment books of the levy court of the said county, and of the Corporation of Georgetown aforesaid, as the estate of the said George King, and was sold as aforesaid by the said trustee, believing it to be such; that, subsequently to the said sale, and knowing thereof, the said Josias Thompson, and his said wife Elizabeth, have preferred a claim to the said part of lot, subject, however, to the widow's right of dower, and have filed their bill of complaint in this honorable court against the other heirs of the said George King, charging that the same was given to them by the said George King in his life-time by a parol gift; and praying that their title to the same may be confirmed, and that certain money by them expended thereon be repaid; that, with full knowledge, as your orator expressly charges, they had of all and singular the premises, and especially of the sale to John W. Baker, at the time when they filed their said bill of complaint, they have failed to make the said John W. Baker, or the said trustee, parties to the said bill, limiting the same exclusively to the heirs of the said George King; that your orator has examined the charges contained in the said bill of complaint of the said Josias Thompson, and his wife Elizabeth, and, on satisfactory information, believes that the same cannot be substantiated; that your orator believes on the said information that the said George King never did give the said part of lot to the said Josias Thompson and his wife, or either of them; that any

such gift was certainly wholly gratuitous, and without obligation, and cannot now be enforced; that, at the alleged period thereof, and up to the period of his death, the said George King was large indebted, and could not have offered the said gift, and the same must have been to the prejudice of the rights of his creditors; that the present unsatisfied claims against the estate of the said George King amount to about thirty-six thousand dollars, of which more than thirty thousand dollars have been ratified by this court; that beyond the price of the said part of lot numbered (76) "seventy-six," the amount distributed among creditors from sales is less than seventeen thousand dollars, and the entire property in dispute and unsold is only assessed in the assessment books of the Corporation at , and would most probably produce much less if a perfect title would be given with the same; that the estate of the said George King is therefore largely insolvent; that your orator believes the said Josias Thompson and his wife, or either of them, have never expended the sum of four thousand dollars, or any thing like that sum, on the said part of lot, as they have in their said bill alleged; that any repairs made by them were without any inducement thereto by the said George King, were wholly temporary in their character, and have long since perished; that the said George King in his life-time permitted the said Josias and his wife to have the occupancy and use of the said part of lot, which your orator charges was abundant compensation for such repairs—of all which premises your orator is prepared to produce adequate proof. That, among the claims against the estate of the said George King is one as special bail of the said Josias in favor of one Jacob Payne, amounting to about seven hundred, which has been allowed by this court, and has received a dividend rateably with other claims; that, beyond this, the said George in his life, loaned his note for the sum of the three hundred dollars due the day of A. D. 18 , to the said Josias, and was afterwards obliged to pay the same, and has never, during his life, nor his administrator since his death, been repaid the same; the amount of which payments to Jacob Payne, and which note is justly due the said George King's estate, and which should be a lien on any decree of your honors in favor of the said Josias and his wife. Your orator farther showeth that the said John W. Baker, being apprised of the said claim of the said Josias Thompson and wife, has refused to comply with his said purchase until the title to the said lot can be perfected, and, as your orator is advised, has deposited the purchase money in bank to abide such issue, hoping thereby to avoid interest and expenses, whilst the said title is undetermined, which must operate to the detriment of your orator, and other creditors of the said George King, even though the money be ultimately paid; that the creditors of the said George King are therefore materially interested in the speedy and correct decision of the said claim; and from the insolvency of the estate of the said George King, are in fact the only persons interested therein; that the other heirs of George King feel no interest in the event of the claim, and will, most probably, permit the bill of complaint of the said Josias and wife to be taken as confessed, by default of appearance or answer, thereby obtaining undue advantage over, and enhancing the difficulties of the creditors in the proper proceedings to vindicate their right. In tender consideration whereof, and for as much as there is no adequate relief by the rules of the common law, and to the end that full and complete justice may be measured to your orator, and the other creditors of the said George King, and that the said Josias and his wife may be compelled to make the said John

W. Baker, and your orator, and other creditors, parties defendants to his said bill of complaint, and to litigate their rights with all persons appearing with interest, and that the said John W Baker may be compelled to defend his said title, &c., and expressly that the said claim of Josias Thompson and Elizabeth his wife may be decreed upon and disallowed with costs; and that any decree in their favor may be subject to the payment of said judgment against George King in favor of Jacob Payne, and of the said promissory note loaned to the said Josias; and that the said sale to John W. Baker be ratified and confirmed, and be decreed to fulfil the terms thereof; and that such other relief may be granted to your orator and the other creditors of George King as may be proper, may it please your honors to grant the usual writ of subpœna to be directed to the said John W. Baker. And, for as much as the said Josias Thompson and his wife reside beyond the jurisdiction of this court, to grant the usual order of publication against them, commanding them to appear and answer this, your orator's bill of complaint, as defendants therein. And your orator, as in duty bound, will ever pray, and so forth.

CLEMENT COX, *Solr. for Complts.*

DISTRICT OF COLUMBIA, *Washington County, to wit:*

On this 6th day of August, A. D. 1827, before the subscriber, personally appears Clement Cox, and makes oath, in due form of law, that he is credibly informed and verily, of law, believes, that Josias Thompson and Elizabeth Thompson, the within named defendants, do respectively reside out of, and beyond the District of Columbia.

W. CRANCH.

Answer of J. W. Baker. The separate answer of John W. Baker to the bill of Charles King:

This defendant, now and at all times saving and unreserving unto himself all benefit of exception to the uncertainties and imperfections in the said bill contained, for answer thereto, or *or* to such part as he is advised it is material to him to make answer unto, saith, as to so much and such parts of the said bill as relate to the debt due to said complainant from the late George King, in the bill mentioned, to the judgment obtained by the Farmers and Mechanics' Bank against him, and to his accounts as administrator of the said late George King, he, this defendant, hath no knowledge or information, save what he has derived from the statements contained in said bill; nor hath this defendant any knowledge or information, save as aforesaid, of the amount of the debts due and owing by said George King; or of the amount of the assets, real and personal; or of the claims set up by said complainant against Josias Thompson, also, in the bill mentioned; or of the merits of the claim set up by said Josias Thompson and Elizabeth his wife, to the piece or parcel of ground in the bill described; or of the circumstances relied upon by complainant in said bill for repelling the same; all the matters and things herein referred to, and in the said bill particularly stated, may, for any thing this defendant knows to the contrary, be true as stated in said bill; as to such part of said bill as states the decree passed by this court for the sale of the real estate of the said late George King, this defendant admits the same. This defendant also admits it to be true, that Raphael Semmes, the trustee appointed by this court for the sale of the said George King's real estate, did, as stated in said bill, sell the piece or parcel of ground, part of lot No.

76, in Georgetown, described in the said bill to this defendant, at public sale, as the estate of the said George King; and this defendant saith and admits that he purchased the same, believing the same to be the estate of said George King, and that no other person had any estate, interest, or claim in or to the same; but that he should acquire through such purchase an absolute estate of inheritance, in fee simple, in possession therein. This defendant also saith, and admits it to be true, that said Josias Thompson, and Elizabeth his wife, did, after such purchase, set up a claim to the said piece or parcel of ground of the nature of that mentioned in said bill; and this defendant saith that, as soon as he heard of the same, he called upon the said complainant, and upon said Raphael Semmes, the trustee, and informed them thereof, and inquired into the nature of the same; and upon that occasion this defendant admits, that said complainant and said trustee stated that said Josias Thompson and wife could not establish any right or title to the said piece or parcel of ground, that the same belonged to said George King, and that this defendant would be safe in completing his purchase. This defendant further admits it to be true, as stated in said bill, that said Josias Thompson and wife afterwards, and before the first of the notes given by this defendant and his son, John H. Baker, for the said purchase money, became due, filed their bill in this court against the heirs-at-law of the said George King to establish the claim they had before made to said property; and the same coming to the knowledge of this defendant and said John H. Baker, he further admits that they did not pay the said notes to the said Raphael Semmes, trustee as aforesaid; and that this defendant declined to complete the purchase of said lot until the said claim of the said Josias Thompson and wife, made in said bill, should be adjudicated upon, and the title to the same lot could be perfected. But this defendant saith, that, at the time the said note became due, he again called upon said Raphael Semmes, trustee as aforesaid, and expressed his willingness to complete his said purchase, and offered to pay him the said note if he would free the said lot from the said suit and make him a good title to the same; and otherwise requested that the said purchase of said lot might be rescinded. And he further saith, and admits it to be true as stated in said bill, that the said Raphael Semmes, expressing his inability to do either, this defendant and said John H. Baker caused the amount of said note to be deposited in the Farmers and Mechanics' Bank of Georgetown, specially for and on account of the purchase money of said lot. This defendant also saith, that, as the other notes given for said purchase money have become due, the amount thereof, respectively, has also been deposited in the said bank in the same manner, as appears by exhibit Y, which is prayed to be taken as part of this answer: of all which, and of this defendant's intention, said Semmes and said complainant had notice before and since said deposite. This defendant saith and admits, that his object in making such deposite was, as stated in said bill, to save interest and expenses while the title to said lot should be in dispute in said suit. This defendant has always been ready and willing to complete his said purchase, and pay the said purchase money to said Raphael Semmes, trustee as aforesaid, if he could have done so safely; but, inasmuch as if his purchase money had been paid to said Semmes, the same would have been divided and distributed amongst the several creditors of said George King, and this defendant would have been left entirely without indemnity against the claim of said Josias Thompson and wife; and as he did not purchase or agree to take even a doubtful title to the said lot, he was advised to deposite the same

upon notice to said trustee, specially for said purchase money, until the said suit and claim should be adjudicated upon; and as the making and institution of the same was no act of his, nor the delay caused by the same any fault of his, he submits, as the said purchase money so deposited is unproductive, he is entitled to be freed from the payment of interest on said purchase money during the pendency of said dispute as to the title of said lot, and the deposite of said purchase money. This defendant submits to the payment of said purchase money immediately upon the determination of the said suit adversely to said Josias Thompson and wife; but if the same shall be determined in their favor, he prays that the said purchase money be vacated and annulled, and that said notes be given up to be cancelled. This defendant further saith, that, at the time he made said purchase, he did not know that said Thompson and wife had any claim to said property; that the price he gave was a full and fair price at the time for the fee simple and inheritance in possession of said lot, and that he believed and supposed the same belonged to said George King; that he had such an estate and interest therein; and that he, this deponent, should acquire such an estate and interest through said purchase; and so, this defendant avers, said Semmes, trustee as aforesaid, and said complainant, supposed and believed. This defendant prays that this said purchase may not be ratified until the termination of said suit against said Thompson and wife; and that thereupon a conveyance of said lot may be made to him upon payment of the purchase money, deposited as aforesaid, without interest from the respective time of deposite, and that the costs of this suit may be allowed to him. All which matters and things this defendant is ready to maintain and prove; and prays to be hence dismissed, &c., without that, &c.

W. REDIN, *for Def't.*

DISTRICT OF COLUMBIA, *Washington County:*

On this second day of February, 1828, John W. Baker made oath in due form of law, that the matters above stated of his own knowledge, are true as stated; and that those stated on the information of others he believes to be true as stated.

Sworn before me, a justice of the peace, the day and year above stated.

HENRY WERTZ, *J. P.*

KING, *vs.* THOMPSON & OTHERS. } Exhibit Y.

I certify that the following sums were deposited by Mr. Baker in the Farmers and Mechanics' Bank of Georgetown, at the respective dates set opposite to each sum, specially for the purchase money of part of lot No. 76, in Georgetown, sold at the sale of George King's estate; and that the same now remain in said bank for that special purchase, not to be paid to R. Semmes, the trustee of King's estate, in actual payment of the notes given by said Baker, before the determination of a controversy respecting the title to said part of lot, 2d February, 1828.

Note due 23–26	July;	1826,	and interest,	- -	$285 14
Do	do	Jany. do	do	- -	293 40
Do	do	July, 1827,	do	- -	301 68
Do	do	do	do	- -	309 96
					$1,190 18

J. I. STULL.

To the honorable the Circuit Court for the District of Columbia:

Answer of Josias Thompson and wife.

The joint and separate answers of Josias Thompson and Elizabeth his wife, late Elizabeth King, to the bill of complaint lately exhibited by Charles King, in the said court, against these respondents and others. These respondents, saving and reserving themselves all just exceptions to the errors and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as they are advised it is material for them to notice, they say that, giving credit to the representations made by the complainant, Charles King, as to the insufficiency of the personal assets to pay the debts of the intestate George King, they assented to the sale of the real estate; yet they did not know that the complainant would attempt to sell, as the property of the deceased, that portion of lot No. 76 in Georgetown, claimed by respondents, and set forth in complainants' bill. So soon as respondents understood that such an attempt had been made, they gave notice of their claim to the purchaser, and filed a bill to enforce their right.

These respondents have no personal knowledge whether the complainant be a creditor of the said George King, or, if so, to what amount: as to these particulars, they call for proof.

Respondent, Josias Thompson, further answering, says, that a few days after his intermarriage with his present wife, the said Elizabeth King, which was on the 6th of October, 1813, the said George King invited respondents to accompany him to view the lot in the bill mentioned, which he said he had intended to give his daughter Betsy upon her marriage: on arriving upon the lot Mr King pointed out the house upon the same, and observed it was much out of repair, but that respondent could repair it at less expense than it would cost him to do it; and added, you can take possession and improve it to your liking.

In such bad state of repair was the house and lot, that, for some years before the period above mentioned, no respectable person would take it, and it was occupied alone by free negroes, who, as respondent was informed, rendered no rent for it. Respondent being aware that a considerable sum of money must be expended upon the house and ground ere they would be a suitable residence for himself and family, and aware, likewise, that it was not expected of him that he should make sale of the property in its then condition, he hesitated to accept of it, and was finally induced to take it lest, by a refusal, he should displease Mr. King. In order to raise money wherewith to make the necessary repairs, respondent disposed of valuable property in the city of Baltimore. On commencing the repairs upon the house, respondent discovered it to be in a much worse condition than he had supposed; new joist, new floors, new studds, in order to strengthen the frame; new wash boards, new chair-boards, new door and window-casing, were put into the building; new room over the kitchen was also erected. The vacant space between the house and kitchen was filled up, and *and* two snug rooms erected therein. An entire new basement story was added to the house, and a cellar dug and walled under a part of the building not previously furnished with a cellar. In fact, after the improvement aforesaid had been completed, but little of the old building remained. Respondent also greatly improved the garden, it being a steep hill side. Respondent enclosed the whole lot with good fences; constructed three falls across the lot, and walled each with masonry about seven feet high, with stone steps to ascend the same. Respondent erected on the lower end of the lot

a two-story building, and commenced four others. Respondent expended in the repairs and improvements aforesaid the full sum of four thousand dollars, which was more than the property was worth when he got possession thereof; all whereof were made with the knowledge and under the daily view of the said George King; who, being a gentleman of great integrity, scrupulously honest and just in all his transactions, it cannot be, that he would have permitted respondent, who was in moderate circumstances, to expend so much money upon property in which he was to have no interest, and liable to be dispossessed at the will of the donor Respondent alleges that said King did not view said property as his after he had, as aforesaid, surrendered the same to respondent; and he is confident, in his opinion, from the circumstance, that, upon respondent's removal to Virginia in the year 1817, the said King accepted of an agency over this property, and let the same for respondent's benefit, and received the rents, and charged respondent for small matters of repairs, and furnished respondent with an account of the expenditures and rents received up to about the first of February, 1820; which amount, as well as certain letters from the said King on this subject, are now on file in the suit brought by respondent and wife against the heirs of said George King concerning said property, in the circuit court, and to which respondent refers as part of his answer in this respect.

In such a bad condition was Cissel Alley, and so steep was a high bank of earth over which it passed, that wheel carriages could not pass upon it, nor could they, without the greatest difficulty, have access to any part of the lot aforesaid. In order to remove these inconveniences, respondent and William Whann, who owned land on the opposite side of said alley, cut down said bank of earth, and paved the alley, at their own expense.

Respondent denies that the said George King ever loaned him his note for $300, or any other sum. He deems it probable that the following transaction may be the one alluded to by complainant: about the first of February, 1820, the said George King endorsed respondent's note, payable at one of the Georgetown banks, respondent thinks it was the Union Bank, for $300. Respondent remitted to said King, by Dr. B. Bohrer, $250, with instructions to apply it to the note aforesaid; the money was delivered by said Bohrer to the said George King, the receipt of which was acknowledged by his letter of the ; about the same time the late Thomas Moore paid to the said George King $137 and 50 cents by respondent's direction, being the amount due by said Moore to respondent: those two sums were more than sufficient, as respondent believes, to discharge the said note and interests.

Respondent admits that the said King paid to Jacob Payne a debt which respondent had made himself liable for as agent of the Potomac Company, amount not recollected, and were to satisfy himself from rents received on respondent's property in Georgetown; but whether he received a sum sufficient for this object, respondent knows not, as he was never furnished with an account of the rents paid to said King after the third of February, 1820.

Respondent is advised, that, if he cannot hold the property aforesaid under the contract aforesaid made with the said George King, he has a lien upon the same for the improvements aforesaid, made with the knowledge and under the eye of the said King, and which has greatly enhanced the value of the lot.

The said Elizabeth, further answering, saith that her father, the said

George King, frequently told her that he intended the said parcel of ground aforesaid for her, and would make a deed therefor at a suitable time; that a few days after her marriage she accompanied her husband and father to the lot aforesaid, and heard the latter tell the former that the lot and house were what he designed for his daughter; he spoke of the bad state the building was in, and desired her husband to take possession of it, and improve it as he pleased: her husband at first spoke of refusing to accept of the property on account of the large sum of money it would require to repair it, but at length agreed to take it.

Respondent, having answered complainants' bill, pray to be hence dismissed, with their costs in this behalf wrongfully sustained.

JOSIAS THOMPSON,
ELIZABETH THOMPSON.

Ohio County, Virginia:

Before me, a justice of the peace for said county, came the above named respondents, and made oath that the facts stated in the preceding answers, so far as they jointly and each of them severally speak, are just and true.

Sworn to this 13th day of March, 1828.

WM. WEBB.

I agree to the above answer being filed, as sworn to before a competent person, with the understanding that, if he should turn out to be incompetent to administer the oath, I may avail of the objection.

C. COX, *for Compl'ts.*

April 22d, 1822.

Answer of Josias Thompson and wife to amended bill.

The joint and separate answer of Josias Thompson and Elizabeth Thompson his wife, supplemental to the answer filed by the said defendant to the bill of complaint of Charles King, complainant.

These respondents, further answering, say that they were married the 6th of October, 1813; and Josias Thompson further says, that a few days after his intermarriage aforesaid, the said George King invited these defendants to accompany him to view the lot in the bill mentioned, which he said he had intended to give his daughter Betsy upon her marriage: on arriving upon the lot Mr. King pointed out the house upon the same, and observed it was much out of repair, but that respondent could repair it at less expense than it would cost him to do it; and added, if you will agree to repair it, you can take possession and improve it to your own liking.

Respondent being aware that it would cost a large sum of money, which at that time it would be inconvenient for him to raise, to put the house in proper repair to become the residence of himself and family, and aware that it was only intended that he should have the property upon these terms, hesitated to accept them, and was finally induced to do so, lest by a refusal he might displease Mr. King. Respondent, fully believing that the property was his, or, which to him was the same thing, his family's, under the said agreement with Mr. King, proceeded to make, at some sacrifice to himself, the necessary repairs; and, in this confidence, expended upon the property large sums of money in order to procure for his family any degree of comfort.

And the said Elizabeth, further answering, saith, that her father required the repairs spoken of in her answer to be made; and, as she has before

said, her husband at first spoke of refusing to accept of the property on account of the large sum it would require to repair it, believing himself bound, if he accepted the terms, to put the house in repair.

JOSIAS THOMPSON,
ELIZABETH THOMPSON.

Ohio County, Virginia:

Before me, George Dulty, a justice of the peace for the county aforesaid, personally came the above named respondents, Josias Thompson and Elizabeth his wife, and, being duly sworn, made oath that the facts in the foregoing answers, jointly and severally stated, are true.

Sworn to and subscribed before me, this 14th May, 1829.

GEORGE DULTY, *J. P.*

JOSIAS THOMPSON,
ELIZABETH THOMPSON.

VIRGINIA, *Ohio County, sct:*

I, William Chapline, clerk of the county aforesaid, do hereby certify that George Dulty, esquire, before whom the within answer was taken, is an acting justice of the peace in and for said county, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said county, this 15th day of May, 1829, and in the 53d year of the Commonwealth.

[L. S.] WM. CHAPLINE, *Clerk.*

And, whereas, afterwards, to wit, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty-two, the said Raphael Semmes and others, by their attorney aforesaid, produced and filed in court here the United States' writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and, in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereto subscribed my name, and affixed the public seal of the said circuit court for the county aforesaid, this 16th day of January, Anno Domini 1833.

[L. S.] W. BRENT, *Clerk.*

Writ of error. UNITED STATES OF AMERICA, ss.—*The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, greeting:*

Because in the record and proceedings, as also in the rendition of a decree in a cause which is in the said circuit court, before you or some of you, between Josias Thompson and Betsy his wife, complainants, and John A. King and others, heirs of George King, deceased, Raphael Semmes, Charles King, and John W. Baker, defendants, a manifest error hath happened to the great damage of the said defendants, as by their complaint

appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which, of right, and according to the laws and the custom of the United States should be done.

Witness, the honorable John Marshall, chief justice of the said Supreme Court.

Issued this 14th day of April, 1832.

W. BRENT,
Clerk of C. C. of D. C. for County of Washington.

Copy appeal bond. Know all men by these presents, that we, Raphael Semmes and Stans. Murray, are held and firmly bound unto Josias Thompson in the full and just sum of two hundred dollars, current money, to be paid to the said Josias Thompson, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this fourteenth day of April, one thousand eight hundred and thirty-two.

Whereas, lately at a circuit court of the United States for the District of Columbia, in the county of Washington, sitting as a court of equity, in a cause wherein Josias Thompson, and Betsy his wife, were complainants, and John A. King and others, the heirs-at-law of George King, deceased, Raphael Semmes, Charles King, and John W. Baker, were defendants, a decree was rendered against the said defendants; and they having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court, to reverse the decree in the aforesaid cause, and a citation directed to the said complainants citing and admonishing them to be and appear at a Supreme Court of the United States to be holden on the second Monday of January next.

Now, the condition of the above obligation is such, that, if the said defendants shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue

RAPHAEL SEMMES. [SEAL.]
STAND. MURRAY. [SEAL.]

Signed, sealed, and delivered in the presence of—
SAMUEL PHILLIPS.

Approved: W. CRANCH.

Citation. UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA—*Washington County, ss:*

To Josias Thompson, and Betsy Thompson his wife: You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of January next,

pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein John A. King and others, heirs-at-law of George King, deceased, Raphael Semmes, Charles King, and John W Baker, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, chief judge of the circuit court for the District of Columbia, this 14th day of April, 1832.